IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 32 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

GANDHINAGAR BOTTLING PVT.LTD.

Appearance:

MR MANISH R BHATT for Petitioner

MR SN SOPARKAR for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 16/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of Revenue, the Income Tax Appellate Tribunal has referred following question of law for opinion of this Court in respect of Assessment Year 1983-84 :

"Whether the Appellate Tribunal is right in law and on facts in directing the I.T.O. to allow depreciation at the rate of 100% on bottles and crates treating them as plant ?"

2. The assessee company was doing the business of bottling and supplying soft drinks. For the previous year comprised of C.Y. 1982, the assessee company filed return of income declaring a loss of Rs. 27,32,430/-. In the assessment finalised under section 143(3), the assessing officer determined the loss at Rs. 10,61,220/and one of the adjustments made was that the assessee's claim of 100% depreciation under section 32(1)(ii) on bottles and crates to the tune of Rs. 13,03,025/- was not allowed. The assessee claimed that for its business of bottling and supplying soft drinks, the bottles and crates constituted plant and each of them had a cost less than the amount prescribed under the previous relevant year i.e. Rs. 750/- and hence the actual cost of each of them was deductible. The C.I.T.(A) accepted the claim. On departmental appeal, the Tribunal upheld the decision taken by the C.I.T.(A)

3. We have heard the learned counsel for the parties. The learned counsel for the parties state at the Bar that the point involved in the Reference is concluded by the decision of Division Bench of this Court in Commissioner of Income-tax v. Saurashtra Bottling Pvt. Ltd. (1998) 232 ITR 270. In the said decision, the Division Bench has taken the view that bottles and crates remain in ownership of assessee and without them, it is impossible to carry on business of manufacturing soft drinks and, therefore, are tools and instruments to attain purposes of business of assessee.

4. In view of the above referred to decision, the Reference is answered in favour of the assessee and against the Revenue. The Reference accordingly stands disposed of, with no order as to costs.

(J.M.Panchal, J.)

(M.S.Shah, J.)

(patel)